

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**METROPOLITAN ST. LOUIS EQUAL
HOUSING & OPPORTUNITY COUNCIL,**

Plaintiff,

vs.

**NORMAN L. JEZEWAK and SIGNATURE
PROPERTY, LLC,**

Defendants.

Case No.: 4:13-CV-00481-HEA

**DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, MOTION FOR MORE
DEFINITE STATEMENT**

COME NOW, Defendants Norman L. Jezewak ("Jezewak") and Signature Property, LLC. ("Signature"), by and through their undersigned counsel, and for their Motion to Dismiss or, alternatively, Motion for More Definite Statement pursuant to FED. R. Civ. P. 12(b)(6) and 12(e), state as follows:

1. In the case at hand, the Metropolitan St. Louis Equal Housing and Opportunity Council ("EHOC") alleges that Defendants engaged in discriminatory housing practices by denying "testers" employed by the EHOC access to housing based on the testers' alleged familial status and race. The EHOC – which brought this case on its own behalf – however, has failed to allege that it has sustained an injury-in-fact as a result of Defendants' allegedly discriminatory conduct.

2. An injury-in-fact is required for there to be a sufficient "case" or "controversy" sufficient to confer Article III standing. An injury-in-fact is "an invasion of a legally protected interest which is (a) **concrete and particularized**, and (b) **actual or imminent**, not conjectural or hypothetical." *Oti Kaga, Inc. v. South Dakota Housing*

Development Authority, 342 F.3d 871, 878 (8th Cir. 2003) (emphasis added, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

3. For the reasons set forth in Defendants' Memorandum in Support, it is well-established that the setback to and frustration of EHOC's purpose do not allege sufficient injuries-in-fact, the costs of the second and third tests and any litigation in this matter are self-inflicted budgetary choices that do not allege sufficient injuries-in-fact, and the unidentified or non-existent "diverted funds" or "further efforts" alleged by EHOC are so non-specific that they simply fail to plausibly state an injury-in-fact, and therefore, based on these allegations, EHOC has failed to state a claim, and absent any other plausible injuries-in-fact, its First Amended Complaint should be dismissed.

4. Alternatively, Defendants request that the Court enter an order directing Defendants to make more definite and certain the allegations with respect to the "diverted funds" and "further efforts" such that they contain more than mere "labels and conclusions," "naked assertion[s]" devoid of "further factual enhancement," or an "unadorned, the-defendant-unlawfully-harmed-me accusation." See e.g., *Twombly*, 550 U.S. at 555, 557 and *Iqbal*, 556 U.S. at 678.

5. Jezewak and Signature incorporate by reference their Memorandum in Support of this Motion as if fully stated herein.

WHEREFORE, Defendants Norman L. Jezewak and Signature Property, LLC request that EHOC's First Amended Complaint be dismissed pursuant to FED. R. CIV. P. 12(b)(6) because it has failed to sufficiently plead an injury-in-fact. Alternatively, Defendants request that if this Court believes that EHOC's allegations plausibly set forth an injury-in-fact, that it grant Defendants' Motion for More Definite Statement pursuant

to FED. R. CIV. P. 12(e) given that, as pled, the allegations in the First Amended Complaint are so vague and ambiguous – especially with respect to the “diversion of funds” and “further efforts” allegations – that Defendants cannot reasonably prepare a response to them.

Respectfully submitted,

THE GOGEL LAW FIRM

/s/ Jeremy A. Gogel

Jeremy A. Gogel, #61866MO
4542 West Pine Boulevard
Saint Louis, MO 63108
Phone: (314) 775-3864
Fax: (314) 531-1069
E-mail: jeremy@gogellawfirm.com

**Counsel for Defendants Norman L.
Jezewak and Signature Property, LLC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via the Court’s electronic notification system and via email this 15th of August, 2014, to the following counsel of record:

Zachary M. Schmook
1027 S. Vandeventer Avenue
Sixth Floor
St. Louis, MO 63110
Phone: (314) 246-9381
Fax: (888) 636-4412
Email: zschmook@ehoc-stl.org

**Attorney for Metropolitan St. Louis Equal
Housing & Opportunity Council**

/s/ Jeremy A. Gogel
